



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 175349

PRELIMINARY RECITALS

Pursuant to a petition filed on June 29, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Buffalo County Department of Social Services regarding Medical Assistance (MA), a hearing was held on August 10, 2016, by telephone.

The issue for determination is whether petitioner's appeal is timely.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Buffalo County Department of Social Services
Courthouse - 407 South Second Street
PO Box 517
Alma, WI 54610-0517

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Trempealeau County.

2. On May 5, 2016, the respondent sent petitioner Notices of Medical Assistance Overpayments, identifying Claim nos. [REDACTED] [REDACTED] [REDACTED] [REDACTED], in the total amount of \$7,068.54.
3. The May 5, 2016 notice specified that any appeal of the identified overpayments needed to be made by June 20, 2016, which was 45 days following issuance of the Overpayment notices.
4. Petitioner filed this appeal by letter post-marked June 29, 2016.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within **45** days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application, an overpayment recoupment, or the reduction or termination of an ongoing case. The petitioner's appeal was filed 54 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

The petitioner asserted that he delayed filing his appeal because he was awaiting an appeal form from the respondent. The respondent's representative testified that petitioner was mailed a form on June 9th. The petitioner estimates that he received the form on the 20th or the 21st of June. Still, the responsibility lies with the petitioner to timely file an appeal. Having to wait for mail delivery does not allow for a waiver of the prescribed time frame, so as to restore jurisdiction. Petitioner was aware of the respondent's claims, was informed of the filing deadline, and did not file timely. Even accepting as true the testimony that petitioner did not receive the appeal form until the 20th or 21st of June, the petitioner still waited another full week to deposit the appeal in the mail. The filing delay deprives DHA of jurisdiction in this matter, and per the Wisconsin Administrative Code, the appeal must be dismissed. See, *Wis. Adm. Code* §3.05(4)(e).

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 22nd day of September, 2016

\s_____
Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on September 22, 2016.

Buffalo County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability